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August 1, 2019

Ms. Jennifer Bird
Maryland Department of the Environment
MDE Consultant Reviewer
MDE Wetlands and Waterways
1800 Washington Boulevard
Baltimore, MD 21230

RE: AI Number: 160464
Nontidal Wetlands and Waterways Application Number: 201960846/19-NT-0150

Dear Ms. Bird:

Please find below a point-by-point response to your comments dated June 21, 2019 regarding the above referenced permit application. Responses to Maryland Department of Natural Resources and U.S. Army Corps of Engineers comments are included in this letter.

Nontidal Wetlands and Waterways Comments:

1. Please note the project proposes greater than 5,000 square feet of permanent impact to nontidal wetlands and some impacts occur within Use III watershed; therefore, this project requires public notice, mitigation, and a Nontidal Wetlands and Waterways Permit. Please provide the following:

Noted

- a. Signed Public Notice Billing Approval Form

A signed Public Notice Billing Form is included in the Adjacent Property Owner List section of the Binder.

- b. List of elected officials

A list of elected officials is included in the Adjacent Property Owner List section of the Binder.

- c. Certification of Notification

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A Certification of Notification of Adjacent Property owners is included in the Adjacent Property Owner List section of the Binder.

- d. Adjoining property owner list in a format suitable for a mail merge

An excel table containing the list of adjacent property owners in a suitable form for a mail merge is being provided with the electronic submittal within the Adjacent Property Owner List section of the Binder. Please note that this list also includes elected officials for each county where elements of the project occur (roadway improvements and mitigation sites). In addition, a set of mailing labels is being provided within the Adjacent Property Owner List section of the Binder for your use.

Forms can be found here:

https://mde.maryland.gov/programs/Water/WetlandsandWaterways/PermitsandApplications/Pages/nontidal_permits.aspx

2. Please note, if the project's limits of disturbance expands and permanent impacts increase after the project has been placed on public notice, an additional public notice will be required.

Noted. All impacts were calculated using a conservative estimate and are currently classified as being permanent, except in limited cases where only maintenance of stream flow impacts are anticipated. As the project moves forward, impacts outside the cut/fill line will be reclassified as temporary and those inside the cut/fill will remain as permanent. Therefore, it is unlikely that an additional public notice will be required unless there is an unanticipated expansion of the Limits of Disturbance.

3. Please provide design and erosion and sediment control plans for the roadway project, or a schedule for the ongoing design packages with anticipated milestone dates.

Design packages for the various contracts are in different stages. Some of the design packages are only at the concept level while others are further advanced. Similar to Phase I of the I-95 ETL project, MDTA will be providing a schedule for the ongoing design packages with the following anticipated milestones: Preliminary Engineering; Semi-Final Design; Final Design; Plans, Specifications and Estimates; Advertisement; and Construction. The detailed schedule is currently being finalized and will be forwarded to MDE once it is available. The high level schedule is included in Appendix A of the Compensatory Mitigation Plan.

4. Additional information will be required during the design stages of the project including, but not limited to:
 - a. Hydrology and Hydraulic Analysis
 - b. Stream relocation plans

- c. Soil boring plans
- d. H&H riprap calculations will be required, and the design at each stage will need to be approved by the Department prior to work in areas where there are regulated resources.

As the milestone submittals are being made, the above requested information will be provided as appropriate by uploading it to the Sharepoint site set up for the project. Not all information will be generated for each submittal; however, all information will be ultimately provided.

- 5. A number of SWM facilities have been preliminarily located in forested wetlands. MDE discourages SWM placement in wetlands. Please continue to look for alternative SWM facility locations throughout the corridor and particularly as associated with the MD 152 Park n Ride. Why is a potential SWM facility shown west of the parking lot? This was not part previous field review discussions. Please continue to coordinate with MDNR regarding SWM in this Use III watershed and provide correspondence to MDE. Please consider a series of pools at SWM facility outfalls in this area to reduce erosive discharges.

Locations of stormwater management (SWM) facilities are being revisited to ensure that impacts to forested wetlands are minimized to the maximum extent practicable. Regarding the SWM facility at the MD 152 Park and Ride, numerous discussions were had with both DNR and MDE regarding the design of this site. As a result, the site has been completely redesigned and the pocket wetland has been eliminated. Instead, a submerged gravel wetland with a forebay has been incorporated into the site design to eliminate the potential for thermal impacts. Erosive velocities are not anticipated to occur. Additionally, the SWM facility was relocated to the south, minimizing impacts to the forested wetland.

- 6. Additional comments in regards to the MD 152 Park n Ride:
 - a. Please provide an alternatives analysis for this facility. Has additional coordination occurred with USACE regarding an alternative site east of I-95?

An alternatives analysis was provided to the agencies on April 11, 2019. Sites east of I-95 have been explored; however, none will meet the purpose and need for a replacement site. Due to the Origin and Destination analysis, facilities east of I-95 will not meet the ridership needs and are expected to be underutilized.

- b. Please pull the LOD further from the wetland buffer surrounding the vernal pool resources on plate 4 and minimize impacts to the surrounding forest.

The LOD has been located further from the wetland buffer surrounding the vernal pool by over 25' in all directions to ensure that impacts to this sensitive resource are avoided to the maximum extent practicable.

- c. The stream channel shown on Impact 1 is currently downcut with a number of headcuts that will ultimately impact wetland hydrology. If the Park n Ride remains in this location, please consider restoring the channel downstream of the parking area to stop the headcutting and protect the wetland.

With the exception of the roadside ditch along Franklinville Road, the LOD has shifted significantly away from the stream and has minimized impact to the wetland. The Stormwater Management Facility has been designed to mitigate peak discharges and erosive flows from Park and Ride facility; therefore, the facility not likely to exacerbate the headcutting and will not compromise the wetland. Direct discharge to stream has been eliminated. The stormwater management provided meets ESD to the MEP (Woods in Good Condition).

7. The Project schedule is fast-paced and design is ongoing, which means that avoidance and minimization will be required throughout the design process as the project moves forward. The impacts for the project are significantly higher than originally estimated and are currently shown as permanent; the designers are required to continue to avoid and minimize impacts throughout the design process. Please provide any updated avoidance and minimization measures as well as updated impact graphics showing reduced impacts. Permanent and temporary impacts will need to be quantified after final design and/or construction is complete to quantify final avoidance and minimization efforts for the project.

As previously noted, all impacts were calculated using a conservative estimate and have been classified as being permanent (except in a few instances where only maintenance of stream flow is anticipated). As the project moves forward, impacts outside the cut/fill line will be reclassified as temporary and those inside the cut/fill will remain as permanent. An exercise has been performed with all of the designers of the individual roadway contracts resulting in a decrease of approximately 3,560 linear feet of USACE jurisdictional stream impacts and 3,157 linear feet of MDE jurisdictional stream impacts (this includes relocation of streams on-site and in-kind) and 22,538 square feet of USACE-jurisdictional wetlands and 22,709 square feet of MDE-jurisdictional wetlands. These reductions will further enumerated system by system in the avoidance and minimization section of the revised Joint Permit Application.

8. Please provide a copy of the alternatives analysis and other relevant NEPA documentation, including the NEPA Reevaluation.

The alternatives analysis for the Park and Ride locations has been previously provided on April 11, 2019. The Environmental Assessment and Finding of No Significant Impact for the Section 200 project can be found here: https://mdta.maryland.gov/sites/default/files/Files/i95section200/FONSI_02-22-2013.pdf.

A NEPA Reevaluation was prepared for Phase I of the I-95 Express Toll Lanes Northbound Extension Project and a NEPA Reevaluation is currently in preparation for Phase II of the project. As soon as the Phase II NEPA Reevaluation is complete and approved by the Federal Highway Administration (FHWA), it will be provided to the Maryland Department of the Environment and the U.S. Army Corps of Engineers; however, this and all NEPA Reevaluations are internal FHWA documents and may not be shared with the public.

9. Follow MDNR recommendations in their response to your January 30, 2019 request in regards to eel and trout protection, forest protection, and SWM measures. Fish passage should be maintained or enhanced throughout the project corridor. Fisheries resources should be adequately protected by instream work restrictions, stringent sediment and erosion control methods, and other BMPs typically used to protect stream resources.

MDNR recommendations regarding the MD 152 Park and Ride (the subject of the January 30, 2019 letter) have been forwarded to the designers of the site. In addition, several meetings have occurred with Maryland Department of the Environment's Stormwater Management Division and MDNR to discuss the design of the stormwater management facilities and the avoidance and minimization measures that are being required for the site. Furthermore, MDNR recommendations regarding corridor-wide practices to protect fisheries resources have been forwarded to designers responsible for individual contracts that comprise the overall Phase II improvements.

10. MHT has recommended a Phase I archeological investigation within a portion of the Piney Run restoration site. This may no longer apply if Piney Run will be eliminated as a mitigation site.

Piney Run has been eliminated as a Compensatory Mitigation Site for wetland and stream impacts; however, it is still being considered for Forest Mitigation (any plantings would occur outside of regulated resources and therefore are not included in this JPA). MDTA has reached out to the property owners to determine the areas that may be viable for planting. As soon as these sites are identified, MDTA will evaluate whether or not they fall within the boundaries of the sites identified by MHT for the Phase I archeological investigation.

11. Please provide additional agency coordination letters as they are received.

All agency coordination letters received to date for roadway improvements, Park and Ride sites, and mitigation sites are included electronically in the Agency Coordination Letters section of the revised Joint Permit Application package. As additional responses are received, they will be forwarded to both your office and the U.S. Army Corps of Engineers for inclusion in the project file. This information will also be incorporated into the NEPA Reevaluation being prepared for Phase II of the project.

12. Based upon a review of the initial application, it has been determined that this project requires further antidegradation review and has been forwarded to Angel Valdez of the Water and Science Administration's Environmental Assessment and Standards Program. It is strongly recommended that you coordinate as soon as possible with Ms. Valdez who may be reached by phone (410)-537-3606, or email angel.valdez@maryland.gov.

MDTA had a meeting with all of the contract designers to determine which portions of their projects fall within the Tier II catchment area and to discuss items required to begin discussions with Angel Valdez regarding the Antidegradation review for these portions of the project. Per direction from Angel, each contract will fill out an individual Tier II worksheet and submit it to the GEC to consolidate and submit to MDE. As designs progress, worksheets will be updated and resubmitted to Angel at MDE.

13. Please continue to provide any up-to-date correspondence with the Environmental Assessment and Standards Program regarding Tier II.

Minutes were taken for the Tier II meeting and these are included in the Tier II Documents section of the JPA. Additional clarification received from Angel Valdez is also provided within the meeting minutes.

14. Please complete the Tier II questionnaire included with these comments.

As stated above, each contract is preparing a Tier II worksheet that will be forwarded to Angel Valdez at MDE as they are completed (a copy will also be provided to you for completeness of your records).

15. Please address the following comments regarding the Compensatory Mitigation Plan:
 - a. Please provide a list of functions and values that each impacted wetland currently provides.

Functions and values are now included in Appendix B of the Compensatory Mitigation Plan.

- b. Please provide a schedule for submittal of a Phase II Mitigation Plan. Please ensure that the Phase II Mitigation Plan is completed in accordance with the October 2016 Phase II Mitigation Plan – Required Information Checklist. Note that Phase II approval will be required prior to issuing a permit.

As per Phase I of the I-95 ETL project, the Compensatory Mitigation Plan provided within this submittal is in conformance with EPA's 2008 Compensatory Mitigation Rule and fulfills both USACE and MDE requirements. All elements of the Phase II Mitigation Plan are included in the Compensatory Mitigation Plan.

- c. Provide a draft schedule for mitigation project construction/completion.

A draft schedule is not yet available for Mill Creek, due to its early design stage. The draft schedules for Lilly Run and Eccleston Mitigation Site are as follows:

Lilly Run

- Assume Design NTP: 9/1/19
- 30% Design Submission: 11/1/19
- 60% Design Submission: 3/1/20
- 90% Design Submission: 7/1/20
- PSE Submission: 11/1/20
- Advertisement: 3/1/21
- Award: 5/1/21
- Construction NTP: 7/1/21
- Construction Completion: 7/1/22

Eccleston

- Assume Design NTP: 9/1/19
- 60% Design Submission: 10/16/19
- 90% Design Submission: 1/21/20
- 100% Design Submission: 4/27/20
- Construction NTP: 6/19/20
- Construction Completion: 5/5/21

- d. Please provide a monitoring plan for stream and wetlands and the customized monitoring plan proposed at the Eccleston site.

The customized monitoring plan proposed at the Eccleston Site was developed based on discussions with the IRT; however, as this site is now being converted to a PRM site these standards will follow the standard MDE monitoring protocol for wetlands and streams. The Lilly Run and Mill Creek sites will follow the standard MDE monitoring protocols for wetlands and streams.

- e. Please provide greater details regarding the Site Protection Mechanism, Adaptive Management Plan, Long Term Management Plan, and Invasive Species Control Plan as part of the Phase II Mitigation Plan submittal.

The details provided in the Compensatory Mitigation Plan for these items matches the standard language used in the I-95 ETL Phase I Compensatory Mitigation Plan. With respect to Site Protection Mechanisms: the Eccleston Site will be placed under an easement and will be protected in perpetuity by a private steward of the land; similar to Phase I of the Lilly Run restoration project, MDTA will enter into a Memorandum of Understanding with the City of Havre de Grace to protect the project in perpetuity; with respect to Mill Creek, MDTA will enter into a similar agreement as the project would occur entirely on property owned by the Town of Perryville.

Adaptive Management will occur according to the 2008 Compensatory Mitigation Rule with appropriate measures taken for elements of the project that are either unsuccessful or are compromised by storm events. Long-term management will be the responsibility of the easement holders with the assistance of the designers to rectify any failures in the design. Invasive species control will be per MDE and USACE standards.

- f. Pg 4 of the CMP, says that monitoring and long-term maintenance not anticipated. Monitoring may be required, pending review of the design.

The reference on page 4 was referring to on-site, in-kind mitigation; per USACE's request, this discussion has been removed from the CMP, as on-site, in-kind stream relocation is not technically part of the mitigation package.

- g. Please refer to the MDE IRT comments regarding the Eccleston Mitigation Design issued on April 8, 2019 (both Matt Hynson's and Kelly Neff's comments). All comments regarding the site design, mitigation work plan, performance standards, crediting, long term management, adaptive management, and financial assurances must be addressed.

These responses are being provided as an attachment to this document.

- h. USACE has requested that Piney Run be removed from the Compensatory Mitigation Plan. Please revise the plan and show that all mitigation requirements will be satisfied.

Piney Run has been removed from the Compensatory Mitigation Plan. All compensatory mitigation needs will be met through a combination of the Eccleston Mitigation Site, Lilly Run Phases II-IV, and the Mill Creek Site.

- i. The Phase I and II Mitigation Plans cannot be approved by the Department until the project has gone through the public notice process, and any public comments received have been considered.

Noted.

- j. Please provide an update on your correspondence with MHT, DNR, and USFWS regarding the trilogy letters for the mitigation sites.

Updated agency correspondence is included within the digital resubmittal of the Joint Permit Application Package, in the Agency Coordination Letters section. As the Mill Creek site has recently been added to the project, these responses have been noted as pending and will be provided once they are received.

16. Please address following comments on impact plates:

a. General Comments:

- i. Verify if permanent impacts to wetlands are fill versus conversion. Areas of conversion should be broken out separately.

A conservative approach has been taken in order to determine compensatory mitigation needs. As design advances for individual contracts, temporary and conversion impacts will be reflected in quarterly updates. This will result in an overall reduction of impacts so it is not anticipated there will be a need to go back out on public notice.

- ii. Verify that where the majority of a wetland is permanently impacted, if the wetland should be considered an entire take (impacted outside of the LOD). Some wetlands are shown this way, but not all.

Impact plates have been reexamined to determine if wetlands that extend outside the LOD should be classified as total takes.

- iii. Ensure that impacts to waters are shown within all cross-culverts that will be disturbed.

Impacts to waters shown within cross-culverts that will be disturbed are shown as impacted.

b. KH-3019

- i. Plate 5. Confirm that wetland hydrology is not cut off and WUS A-23 will not be affected by the impacts to WET B. See comment 16.a.ii above.

The LOD has been modified slightly to avoid impacts to WUS A-23. Wetland hydrology will not be cut off from the portion of WET B that is outside of the LOD, so this wetland is not being considered an entire take.

- ii. Plate 7. WET A-17, majority of wetland is impacted, will remaining portion still exist? If not, please consider full take on WET A-17. Update impacts on this Plate and all relevant places. See comment 16.a.ii above.

WET A-17 is now shown as an entire take.

- iii. Plate 16. Waters QQ is impacted within the LOD, but continues off the Plate. There are no subsequent impact plates showing the remaining stream, please provide impact plates for this area. (no match lines showing that this continues and if it will be impacted)

Plate 47 has been added to show the missing portion of Waters QQ between plates 15 and 16.

- iv. Plate 21. Can impacts to WUS A-11 be avoided? It is barely within the LOD.

Impacts to WUS A-11 have been avoided.

- v. Plate 40. Impacts to WET A-5 PEM Buffer is not listed in the table, please update the impact table.

Impacts to WET 1-5 PEM Buffer have been avoided.

- vi. Plate 41. Confirm impacts to Wetland H have been authorized. Also confirm that further impacts of this wetland will not affect hydrology to WUS A-8.

Confirmed – this section of Wetland H is being called out in this manner because it is expected that it will cease to exist after I-95 ETL Phase I is completed, before Phase II begins. This portion of the wetland is located within the fill line of Phase I.

c. KH-3020

- i. Plate 4. Check hydrology of WET C-17 D-1. Will removal of half of the wetland affect resources downstream? Should this be a total take?

This plate is now Plate 7. We believe that downstream resources will not be affected as a result of the proposed impacts to WET D-1. The portion of the wetland that will not be impacted likely receives all hydrology from runoff and groundwater and will maintain connection to all downstream resources outside of the LOD. All resources downstream and within the LOD will be impacted as well, as shown on plate 7. Drainage will be maintained throughout the impacted area after construction in a way that mimics current function of the impacted portion of WET D-1 and its downstream resources. Given that approximately half of the wetland won't be impacted, and that it will still receive hydrology after construction, WET D-1 is not considered a total take.

- ii. Plate 8. Confirm there are no impacts to the culverted portion of WUS G-5

This plate is now Plate 11. No impacts to this culvert are anticipated.

d. KH-3021

- i. Plate 3. Please confirm hydrology source for WUS C-28.

This perennial stream continues from outside study area.

- i. Plate 6. WET C-10 PFO Buffer impacts are not being shown within the table, please update the table.

Impacts to WET C-10 buffer are now shown within the impact table. Also, WET C-10 is now labeled on Plate 6.

- ii. Plate 6. Please confirm WUS C-29 is full take outside of the LOD.

Impacts to this resource have been avoided.

- iii. Plate 18. Can impacts to WATERS Y be avoided?

Impacts to Waters Y have been completely avoided. The 1 LF of impacts on this plate is a barely visible portion of Waters V, which is a total take that is primarily shown on neighboring plates.

- e. KH-3021 Winters Run Bridge

- i. Plate 1. Confirm there are no impacts to 100-year floodplain.

The impacts to the 100-year floodplain on this plate are within the overlap with KH-3021 MD 24 and are reflected within those plates instead.

- ii. Plate 2. Please clarify the work being proposed within the impacted resources.

We are unable to provide information about impacts to resources shown on Plate 2 and Plate 4. The bridge structure analysis is not complete; therefore, it is unknown what work will be required to construct the bridge piers and abutments for the new (widened) portion of the bridge. If existing bridge pier/abutment replacement is needed, existing concrete slope protection will need to be removed and could be replaced with imbricated rip rap; however, analysis is needed to make this determination.

The Limit of Disturbance was established as the existing Right-of-way line (Plate No. 4). At this time all areas for potential staging are being retained. Impacts to Wetland C-12, its 25-foot buffer and Waters FF (Plate No. 2 and No. 4) will be avoided if to the extent possible, but staging needs are unknown at this time.

- iii. Plate 3: WUS C-30 is labeled perennial but should be intermittent

This has been corrected on the plate.

f. KH-3022

- i. Plate 1. Please clarify the work completed in WATERS G that is only temporary within the culvert.

The temporary impact to Water G within the culvert is due to Maintenance of Streamflow through the culvert using a gravity fed hose.

- ii. Plate 2, although it is not impacted, "Waters G" is labeled on the plate but it is located on Plate 1. The WUS on Plate 2 should be labeled "Waters K".

This has been corrected.

g. KH-3023

- i. Plate 2. Please clarify the break between Int/Per and where it is culverted.

This has been clarified on the plate.

h. KH-3027

- i. Plate 4 shows 3 different wetland polygons, only 2 are labeled. The wetland on the left side of the plate should also be labeled as WET E-4.

This has been corrected.

i. KH-30XX/Calvary

- i. Plate 3. Are impacts to culvert WUS 6D a pipe replacement? If so, it may be temporary impacts.

A portion of the impacts would be associated with a pipe replacement; however, it is currently unknown if this pipe replacement would be required. However, a conservative approach is being taken in which all impacts are being considered as permanent for permitting and compensatory mitigation purposes. Quarterly updates will be provided as design and construction of individual contracts proceeds, in which impacts for both wetlands and waters of the US will be broken out into temporary and permanent.

- ii. Plate 5. WUS 5D, see comment above.

Same response as above.

- iii. WUS H-2 is labeled as perennial but should be intermittent.

This has been revised on the impact plate.

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DNR has also reviewed JPA #201960846 for MDTA's I95 ETL NB Extension Phase II project and is providing the following comments:

DNR has also reviewed JPA #201960846 for MDTA's I95 ETL NB Extension Phase II project and is providing the following comments:

- Where presence of yellow perch has been documented in the vicinity of an instream project area, generally no instream work is permitted in Use I waters during the period of February 15 through June 15, inclusive, during any year (unnamed tributaries to Gunpowder Falls, Winters Run, unnamed tributaries to winters run, Haha Branch and James Run).

This information has been conveyed to the designers of each contract and will also be included in contract documents.

- Where presence of yellow perch has been documented in the vicinity of an instream project area, generally no instream work is permitted in Use III waters during the period of October 1 through June 15, inclusive, during any year (Little Gunpowder Falls, unnamed tributaries to Little Gunpowder Falls and Bynum Run).

This information has been conveyed to the designers of each contract and will also be included in contract documents.

- Where presence of yellow perch has been documented in the vicinity of an instream project area, generally no instream work is permitted in Use IV waters during the period of February 15 through June 15, inclusive, during any year (Honeygo Run, Bird River and Gunpowder Falls).

This information has been conveyed to the designers of each contract and will also be included in contract documents.

- The project should be designed to maintain or enhance fish passage through the project area where new or widened road crossings will occur, particularly during low flow periods.

This information has been conveyed to the designers of each contract and will also be included in contract documents.

- DNR requests construction plans and details for the MD152 Park and Ride site and for each mitigation site, stream crossing and stream relocation.

Construction plans and details for both the MD 152 Park and Ride site as well as each mitigation site, stream crossing and stream relocation will be provided to MDNR.

- DNR requests an explanation of the design basis for stream restoration at each mitigation site and stream relocation site (e.g. reference reach, geomorphic assessment, Rosgen stream class, etc.).

The basis of design is provided for each project in its respective report. As designs are furthered, information will be provided to appropriate agencies. In general, the basis of designs at the mitigation sites are as follows:

The Lilly Run design is not based off a reference reach. The design was chosen to maximize wetland creation in areas with limited constraints. In general, this system is prone to frequent flooding and the approach that was chosen was one that could achieve ecological uplift while not increasing flood elevations and working within the various constraints created by the existing infrastructure.

The Eccleston reference data is proprietary and has been provided through presentation to DNR staff during IRT meetings while the site was still under development as a Mitigation Bank.

The Mill Creek site consists of removal of a fish blockage and such has no reference reach. The proposed work consists of removal of riprap and gabion baskets and creation of step pools to facilitate passage of anadromous fish species.

- To assure that impacts are minimized to the greatest extent possible and that habitat is conserved, the following conditions should be incorporated into the plans for the proposed stream relocations:
 - The relocated stream channel should be designed to replicate the habitat conditions characterizing the existing stream channel as closely as possible. It is recommended that the plans involve the use of woody debris and natural bank stabilization techniques to enhance the habitat potential. Also, the creation of meanders with intermittent deep pool and riffle areas should be incorporated into the project designs.

This information has been conveyed to the designers of each contract. These requests will be considered to the extent practicable; however, due to constraints within the highway right of way, many streams will be replaced on-site and in-kind, replicating the habitat conditions that characterize the existing stream channel(s) as closely as possible. As such, incorporating meanders and deep pool and riffle areas may not be feasible.

- The corridor of the created stream channel should be vegetated with native forest species to replace habitat lost, maintain opportunities for inputs of allocthonous materials into the waterway, and provide shading.

This information has been conveyed to the designers of each contract and will be included in contract documents. For mitigation sites outside of the highway right of way, vegetation with native forest species will be incorporated to provide shading and enhance thermal protection and allow for inputs of allocthonous materials.

- Temporarily disturbed areas should be restored to original contours and revegetated.

Noted. This information has been conveyed to the designers of each contract and will also be included in contract documents.

- Excavated materials should be stockpiled outside of the stream floodplain in an upland area.

NOTED. This information will be included in contract documents.

- DNR's preferred stormwater treatment basin design for the MD152 park and ride site is a drypond; however, if proven infeasible and a wet pond is needed, the wet pond must include a submerged gravel component at the outfall to prevent thermal impacts downstream. The wet pond should be monitored for thermal impacts.

The use of a wet pond at this location has been eliminated and a submerged gravel wetland has been designed to prevent thermal impacts.

- Based on the existing conditions at Piney Run, a designated natural trout stream that supports reproducing populations of trout species, and the potential to connect to other nearby restoration projects, DNR favors this Sykesville mitigation site for stream restoration.

USACE and MDE have determined that the Sykesville mitigation site will not be considered for compensatory mitigation for unavoidable impacts to streams. This is due to the presence of coal ash in the Springfield Hospital portion of the site, which poses a concern not only to worker safety but also to overall water quality. Additionally, the presence of a sewer line paralleling the length of the stream limits the possibility to create a meandering system. As such, MDTA is unable to utilize the site as compensatory mitigation.

- DNR requests that existing trees be preserved to the extent possible.

Existing trees will be preserved to the extent possible; however, as a roadway improvement project, in some cases this will not be possible while meeting the purpose and need of the project.

- The Forest Conservation Act provides for the retention of forested areas in sensitive areas on the subject property as one method of mitigation.

Forest impacts will be reduced to the maximum extent practicable; however, as a roadway improvement project, in some cases this will not be possible while meeting the purpose and need of the project. Furthermore, this project, similar to Phase I, will fall under the Reforestation Law.

- Do not remove or disturb forest habitat during April-August, the breeding season for most Forest Interior Dwelling Bird Species (DFIDS). This seasonal restriction may be expanded to February-August if certain early nesting FIDS are present.

This request will be accommodated to the extent practicable. As a roadway improvement project, in some cases this will not be possible while meeting the purpose and need of the project. Most of the impacts will occur on the edges of existing forests.

- DNR supports the re-use of the existing woody debris as much as possible.

Existing woody debris will be re-used to the extent practicable.

- DNR requests clarification on the minimum aerial coverage of trees versus shrubs at each mitigation site.

Trees and shrubs will provide the aerial coverage as specified in the standard vegetation monitoring requirements for MDE's protocols for forested and scrub/shrub wetlands.

- DNR requests that tree species native to the site be included in the plant schedule and that coastal plain species (e.g. Loblolly Pine) be avoided.

Native species are being proposed in planting plans for each mitigation site and loblolly pine will be excluded from the plant palettes.

- The Invasive Species performance standard, allowing up to 25% of invasive plant cover at the Eccleston mitigation site, appears to be in conflict with the Aerial Cover Vegetative Standard for the site which requires a minimum of 85% native cover by the fifth year. The Invasive Species performance standard is also inconsistent with the I95 ETL NB Extension Phase I standard of 10% or less invasive species. DNR recommends that the Phase II standard require 10% or less invasive species regardless of the preexisting site conditions.

This project will defer to the standard invasive species requirements similar to the rest of the I-95 ETL mitigation projects.

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- DNR requests that both heavy equipment and construction mats be power washed or for new mats to be used for the construction access route, so that invasive species are not introduced.

This will be included in contract document as a condition of each construction contract.

- DNR WHS has no comments regarding impacts to RT&E species from the work as proposed in this permit application.

Noted.

U.S. Army Corps of Engineers Comments Received June 6, 2019

I have completed my review of the application for Stage II. Overall, the application package is very thorough and is acceptable. However, I have determined that the compensatory mitigation plan (CMP) is incomplete and does not meet our requirements as outlined below. Please note that a complete CMP is required component of the public notice that we intend to issue for the project. Therefore, your application is being returned. Please resolve the outstanding issues and submit a revised CMP within 30 days of this email. If it is not received within that timeframe, the Corps review will be suspended. Once the information is received, the Corps review will be immediately reinitiated.

As previously discussed, the revised Compensatory Mitigation Plan is being resubmitted at the same time the revised Joint Permit Application package is being resubmitted to MDE in response to the Additional Information request due to MDE no later than August 8, 2019. This is to synchronize the state and federal reviews of the documents.

Phase I Excess & On-Site, In-Kind Mitigation Sites - The Corps considers the relocation of streams that is required for the construction of a project to be self-mitigating. Therefore, these sites are unacceptable. Further, these sites would not be protected under protective measures as required by the Mitigation Rule of 2008 (Rule).

Relocation of streams has been removed from the CMP. Streams to be relocated have been coded in the impact calculation spreadsheet to specify that compensatory mitigation for these impacts is not required (effectively designating the impact as being self-mitigated).

Piney Run - Determined to be unacceptable due to on-site contaminants (coal ash), utility crossing easements that would likely be expanded in the future with upgrades, distance from proposed impacted watersheds.

For the reasons stated above, Piney Run has been removed as a Compensatory Mitigation Site for unavoidable impacts associated with Phase II of the I-95 ETL Northbound Extension Project.

Ms. Jennifer Bird
August 1, 2019
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Winters Run - Acceptable provided that perpetual protective measures can be incorporated by MDTA.

Mitigation at Winters Run has been determined to be infeasible due to potential destabilization of existing infrastructure. This site is being removed from the Compensatory Mitigation Plan.

Lilly Run - Acceptable provided that the City of Havre de Grace is amenable to proposals and, the required elements of the Rule such as perpetual protection, etc.

Noted. MDTA has entered into a Memorandum of Understanding (MOU) for Phase I of Lilly Run that outlines elements of the 2008 Compensatory Mitigation Rule such as perpetual protection of the site. This MOU will either be amended, or a new MOU will be signed by the City of Havre de Grace and MDTA, to ensure that Phases II-IV of Lilly Run are protected in perpetuity.

Eccleston Site - Unacceptable as it is currently proposed as a mitigation bank which has not been approved by the Corps or MDE. However, the site is likely to be converted to a permittee responsible mitigation site (PRM). If/when the site is changed to a PRM, the site would be acceptable to the Corps.

The Eccleston Site is being converted to a Permittee Responsible Mitigation Site. Negotiations are currently underway with the project sponsor and MDTA and are expected to be finalized in the near future. A sole-source agreement is being evaluated by MDTA's procurement division for negotiations to proceed.

Should you have any further questions, please don't hesitate to contact me directly at 410-931-0808 or bwolfe3@mdta.state.md.us.

Sincerely,



Brian Wolfe, P.E.
Acting Director of Project Development
Office of Engineering and Construction

Enclosure (Response to MDE and DNR Comments regarding Eccleston Site)

cc: Carl Chamberlin, Division of Planning and Program Development, MDTA
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